

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

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JEANNE HICKS, CLERK
S. FIELDS

BY: _____

Larry A. Hammond, 004049
Anne M. Chapman, 025965
OSBORN MALEDON, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
lhammond@omlaw.com
achapman@omlaw.com

John M. Sears, 005617
P.O. Box 4080
Prescott, Arizona 86302
(928) 778-5208
John.Sears@azbar.org

Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)	No. P1300CR20081339
)	
Plaintiff,)	Div. 6
)	
vs.)	MOTION TO PRECLUDE LATE
)	DISCLOSED EVIDENCE
STEVEN CARROLL DEMOCKER,)	
)	(Oral Argument Requested)
Defendant.)	
)	
)	
)	

MOTION

Steven DeMocker, by and through counsel, hereby respectfully requests that this Court exclude evidence from the trial in this matter that the State late disclosed to the defense on March 4th and 5th, 2010. This motion is based on the Due Process Clause, the Confrontation Clause, the Eighth Amendment and Arizona counterparts, Arizona

1 Rules of Evidence, Arizona Rules of Criminal Procedure and the following
2 Memorandum of Points and Authorities.

3
4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 A detailed history of the State's disclosure violations has been provided to the
6 Court in prior pleadings and will not be duplicated here. It does bear repeating that the
7 cumulative nature of these violations - where the disclosure deadline in this case was set
8 by the Court on May 12, 2009 for June 22, 2009 and the State has disclosed over 24,000
9 pages in February and now over 700 pages in March of 2010 - has crippled the
10 defense's ability to prepare for trial, review the disclosure, research and hire its own
11 experts, and prepare to confront the State's evidence in a death penalty case that has
12 been pending for over a year and a half. Trial is now less than eight weeks away.

13 The Court should exclude the following evidence based on its late disclosure.
14 The evidence was known to the State well before the disclosure deadline and the State
15 failed to exercise due diligence to request and disclose the evidence to the defense. The
16 State has not offered any good cause for its failure to exercise due diligence. The late
17 disclosure has prejudiced the defense's ability to prepare for trial, as outlined above and
18 in prior motions. The evidence should therefore be excluded pursuant to Rule 15.7.

19
20 **1. Account Records for Account ending in 2663 JP Morgan Chase**

21 Almost three hundred pages for a JP Morgan Chase account ending in 2663 were
22 disclosed to the defense on March 4, 2010. This was known to the State at least as early
23 as June 2009. (See bates number 5763). The State has not offered any explanation for
24 its disclosure of this evidence in March of 2010, over nine months after it was aware of
25 the account and well after the disclosure deadline set by the Court. The defense is not
26 able to review and evaluate this evidence, in addition to the tens of thousands of other
27 pages of late disclosure, prepare this evidence for defense experts and confront the

1 State's evaluation of this evidence with less than eight weeks to trial in a death penalty
2 case that has been pending for over a year. This evidence should be excluded pursuant
3 to Rule 15.7 in the absence of good cause shown for its late disclosure.
4

5 **2. Subpoena for Girard Phone records of activity from June 17 – June 21,**
6 **2009**

7 On March 4, 2010 the State disclosed phone records for Ms. Girard between June
8 17 and June 21, 2009 to the defense. The State did not subpoena records for Ms. Girard
9 until February 2010. The State has been aware of Ms. Girard and her relationship with
10 Mr. DeMocker since June 2008. In the absence of good cause demonstrated for its
11 failure to request and disclose this evidence in accordance with the Court's disclosure
12 deadline or at least earlier than 8 months after the fact, it should be excluded pursuant to
13 Rule 15.7.

14 **3. Outdoor Pro Link Information and Request to FBI (18723-24, 18880-**
15 **18881, 18913)**

16 On March 4 and 5, 2010 the State disclosed information from Outdoor Pro Link,
17 La Sportiva and a request to the FBI regarding Mr. DeMocker's purchase of shoes.
18 This information directly relates to the witnesses, information, investigation and report
19 that the State withheld from Mr. DeMocker from October 2009 through February of
20 2010 regarding shoe print evidence and La Sportiva shoes. The facts of this withheld
21 disclosure have been briefed and argued to the Court in other pleadings. The State has
22 also now requested additional testing by the FBI and identified for the FBI a disclosure
23 deadline of April 5. The State has provided shoes to the FBI that are not the shoes in
24 question and no such similar shoes have been provided to the defense. This evidence
25 should likewise be excluded based on the State's withholding of evidence while the
26 issue was being litigated before the Court and given the State's interference with the
27 defense ability to investigate the case.
28

1 **4. Chase Bank Information re account ending in 9408 (18770-28854)**

2 On March 4, 2010 the State disclosed over 75 pages of documents from a
3 subpoena issued on February 8, 2010 for information from a Chase Bank account
4 ending in 9408. This account was known to the State as of November of 2008. (See
5 bates number 1264). The State offers no explanation for its failure to request this
6 information until over a year after the account was known. In the absence of good
7 cause, this information should be excluded pursuant to Rule 15.7.

8 **5. UBS Resource Account ending in 6347**

9 On March 5th the State disclosed to the defense a subpoena to UBS and letter
10 response indicating a CD had been provided to the State (although the CD has not been
11 disclosed to the defense). The subpoena requested documents regarding an account
12 ending in 6347. This subpoena was not issued until February 16, 2010. The State was
13 aware of this account since at least November of 2009 (see bates number 14402) and
14 has offered no good cause for its failure to exercise due diligence in requesting this
15 information. This information should be excluded pursuant to Rule 15.7 based on the
16 State's failure to timely investigate and disclose. Additionally, the State has failed to
17 provide the responsive CD to the defense.

18 **8. Emails between Mr. DeMocker and info@enjoyprescott (18953-18957)**

19 On March 5, 2010 the State disclosed emails that appear to have been in the
20 State's possession since September 2008 between Mr. DeMocker and "Cherie"
21 regarding a rental property. The State provides no good cause for its failure to disclose
22 these documents until more than a year after it possessed them and they should be
23 excluded pursuant to Rule 15.7 absent such a showing.

24 Rule 15.7 gives the Court wide discretion in imposing a sanction. The State
25 should not be permitted to thwart the Court's disclosure deadlines until mere weeks
26 before a death penalty trial when the Court made clear in May of 2009 that extensions
27

1 for disclosure would be granted only where good cause was shown. The permitted
2 sanctions under Rule 15.7 include precluding or limiting the calling of a witness, use of
3 evidence or argument; dismissing a case; granting a continuance or declaring a mistrial;
4 holding counsel in contempt; imposing costs; or other appropriate sanctions. This Court
5 should exclude the late disclosed evidence based on the pattern of conduct evidenced by
6 the State in this case.

7
8 **CONCLUSION**

9 Defendant Steven DeMocker, by and through counsel, hereby requests that this
10 Court prohibit the State from offering late disclosed evidence as described above.

11 DATED this 10th day of March, 2010.

12
13 By: 

14 John M. Sears
15 P.O. Box 4080
16 Prescott, Arizona 86302

17 OSBORN MALEDON, P.A.
18 Larry A. Hammond
19 Anne M. Chapman
20 2929 N. Central Avenue, Suite 2100
21 Phoenix, Arizona 85012-2793

22 Attorneys for Defendant

23 **ORIGINAL** of the foregoing hand delivered for
24 filing this 10th day of March, 2010, with:

25 Jeanne Hicks
26 Clerk of the Court
27 Yavapai County Superior Court
28 120 S. Cortez
Prescott, AZ 86303

1
2 **COPIES** of the foregoing hand delivered this
3 this 10th day of March, 2010, to:

4 The Hon. Thomas B. Lindberg
5 Judge of the Superior Court
6 Division Six
7 120 S. Cortez
8 Prescott, AZ 86303

9 Joseph C. Butner, Esq.
10 Prescott Courthouse basket
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